

*In the Matter of Jay Andreyco*

DOP Docket No. 2006-398

**(Merit System Board, decided August 23, 2006)**

Jay Andreyco, a former Park Maintenance Worker with the Mercer County Park Commission, represented by Frank M. Crivelli, Esq., petitions the Merit System Board (Board) for a hearing regarding his termination from employment.

The appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) on February 23, 2005, charging him with conduct unbecoming a public employee and violation of a rule, regulation or policy. Specifically, it was asserted that the appellant tested positive for an illegal substance on February 14, 2005 in violation of the Mercer County drug and alcohol policy. A departmental hearing was conducted on April 5, 2005, and a Final Notice of Disciplinary Action (FNDA) was issued on June 22, 2005, upholding the charges and removing the appellant from employment, effective February 21, 2005. The appellant filed a timely appeal of his removal with the Merit System Board.

Upon receipt of the appeal, staff of the Department of Personnel (DOP) was unable to locate any record of the appellant's employment in an effort to ascertain his entitlement to a hearing regarding his termination. Subsequently, the Mercer County Park Commission supplied records reflecting that the appellant was hired as a Seasonal Assistant on June 22, 1998. Although staff of the Mercer County Park Commission represented that the appellant had since been "promoted" to a full-time, permanent position as a Park Maintenance Worker, no records related to this movement could be located. However, subsequent contact with the appointing authority for Mercer County suggested that the appellant was not a permanent career service employee.

Thus, by letter dated May 26, 2006, the parties were advised that a question had arisen regarding the appellant's employment status and entitlement to a hearing regarding his removal. The parties were afforded 20 days to supplement the record with arguments and documentation addressing the issue of the appellant's entitlement to a hearing.

In response, the Mercer County Park Commission, represented by Nora R. Locke, Assistant County Counsel, asserts that the appellant is an unclassified employee of an autonomous body of Mercer County. Specifically, it contends that *N.J.S.A. 11A:3-5(n)* establishes that employees of county

park commissions in counties of the second class are unclassified employees and not entitled to the protections of Title 11A. It represents that Mercer County's population, "as of the 2004 census," was 365,271, making it a county of the second class. See *N.J.S.A.* 40A:6-1(b).

It is noted that the appellant has provided no further arguments or documentation for the Board's review.

## **CONCLUSION**

*N.J.S.A.* 11A:3-5(n) provides that employees of county park commissions in counties of the second class shall be in the unclassified service. *N.J.S.A.* 40A:6-1(b) provides that counties having a population of more than 200,000 but less than 550,000 shall be classified as counties of the second class. As of 2004, Mercer County had a population of approximately 365,271. <http://www.epodunk.com>. Only permanent employees in the career service or a person serving a working test period are entitled to a hearing regarding a removal or any other form of major discipline as defined under applicable criteria. See *N.J.S.A.* 11A:2-6(a), *N.J.A.C.* 4A:2-2.1 and *N.J.A.C.* 4A:2-2.2. Thus, a provisional, unclassified or temporary employee may be terminated at any time at the discretion of the appointing authority and is not entitled to the procedural protections afforded by a hearing. *Williams v. Civil Service Commission*, 66 *N.J.* 152 (1974). Accordingly, the record reflects that the appellant was an unclassified employee of the Mercer County Park Commission, and, as such, is not entitled to a hearing regarding his termination.

## **ORDER**

Therefore, it is ordered that the petitioner's request for a hearing be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.